

ISSUE DATE: February 17, 1999

DOCKET NO. E-002/M-95-54

ORDER DIRECTING REPORTS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Edward A. Garvey
Joel Jacobs
Marshall Johnson
LeRoy Koppendrayer
Gregory Scott

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Petition by Northern States
Power Company for Approval of its Biomass
Phase I Power Purchase Agreement with
Minnesota Valley Alfalfa Producers

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PROCEDURAL HISTORY

On September 28, 1998, MEC filed a request that the Commission, in its capacity as the "responsible authority" under the Minnesota Data Practices Act, classify the Power Purchase Agreement (PPA) between Northern States Power Company (NSP) and Minnesota Valley Alfalfa Producers (MnVAP) as "public government data," and make the PPA available in its entirety to MEC and other interested parties.

On September 30, 1998, MnVAP faxed comments to the Commission requesting it deny MEC's request.

On October 1, 1998, in accordance with the Commission's internal procedures for administering such requests, the Commission sent MnVAP and NSP a copy of MEC's request and requested that they respond to MEC's letter regarding the classification of the PPA. The Commission indicated that a response should indicate the factual and statutory basis for a claim that the data not be made public under the Data Practices Act.

On October 6, 1998, MnVAP faxed a response to the Commission and followed up with a hard copy received October 7, 1998.

On October 8, 1998, NSP filed a response to the MEC request.

On October 9, 1998, the Commission sent a letter to MnVAP and NSP asking for a response as to the specific sections of the PPA that contain trade secret information. The Commission indicated to the parties that entire documents cannot be withheld merely because they contain some exempt information.

On October 12, 1998, the Commission issued a letter to reaffirming that MEC would not object to a delay in the Commission's response to MEC's Data Practice request since the Commission delayed the case to accommodate the time that the MEC representative would not be available.

On October 13, 1998, MnVAP faxed a response to the Commission listing the portions of the PPA that could be disclosed without harming MnVAP's interests in the event the Commission rejected the arguments of MnVAP and NSP that the entire PPA and all appendices constitute trade secret information.

On October 27, 1998, the Commission asked the Minnesota Department of Administration (DOA) to review the PPA and the comments submitted by the parties and issue an advisory opinion in accordance with Minn. Stat. 13.072.

On October 30, 1998, MEC filed comments in response to those submitted by MnVAP and NSP in response to MEC's request to classify the PPA as public data. These comments were forwarded to the Commissioner of the DOA on November 6, 1998.

On December 31, 1998, the DOA faxed the Commission the DOA's advisory opinion regarding the status of data filed in this docket.

On December 31, 1998, the Commission issued a notice, with the advisory opinion attached, asking parties to comment on the opinion.

On January 14, 1999, MnVAP, NSP, and MEC filed comments on the Minnesota DOA advisory opinion.

The Commission met on February 11, 1999 to consider this matter.

FINDINGS AND CONCLUSIONS

The Commission notes that some progress has been made in identifying areas of the PPA, initially claimed as nonpublic government data in its entirety, that NSP and MnVAP now agree may be treated as public data. See Appendix A to Commission Staff Briefing Papers for the Commission's February 11, 1999 meeting which is attached to this Order marked Attachment A.

At the same time there are several portions of that document (see Appendix B of Staff Briefing Papers) which appear to qualify for protected nonpublic status but upon which the parties have not agreed, to date. In addition, NSP has filed several additional appendices to the PPA that the parties have not jointly reviewed to determine whether they can agree about how this data should be treated. Finally, the parties have not had an opportunity to examine together MEC's claim that all documents filed in this matter after March 1, 1998 (comments, briefs, etc.) should be treated as public government data. Any portions of those post-March 1, 1998 filings which simply incorporate, reproduce or reformulate private nonpublic data from the PPA (including the recently filed appendices thereto) would also be classified and protected as private nonpublic materials. The Commission finds that the parties have not exhausted the possibility of resolving, to their own satisfaction, their current disagreement over what parts of MnVAP's PPA and related filings

should be treated as public government data. Nor have the parties sufficiently identified and presented their most specific arguments on the portions of the record that remain in contest as to their government data status. The parties (MEC, MnVAP, and NSP) have agreed to work together for a two-week period in an attempt to resolve and/or clarify the remaining areas of dispute.

The Commission, therefore, issues this procedural Order (as specified in the Ordering Paragraphs) to facilitate, if possible, final resolution of this matter, in whole or in part, by agreement between the parties. MEC, as the party filing the data practices request, has consented to this approach and timetable for addressing its request. At a minimum, the efforts directed by the Commission in this Order will develop the record more fully, refining the areas of conflict and providing the Commission with a sounder basis for deciding whatever issues may remain between the parties.

The Commission clarifies that in directing the parties to file a report identifying what items are subject to the trade secret exception using the Department of Administration's four prong test, the Commission is not deciding at this time that the four prong test is the proper standard to apply. The Commission notes that it is also directing the parties to indicate any item not a trade secret per the four prong test that the party believes would achieve trade secret status using the three prong test. The Commission reserves for future consideration, as necessary, a decision regarding the proper standard.

ORDER

1. On or before February 25, 1999, MEC, MnVAP, and NSP shall file a joint report, separate reports, or a combination of joint and separate reports with the Commission on the progress of their efforts to resolve their data status disagreements in this matter. In their report(s), the parties shall
 - a) identify what items in the following three areas the parties agree should be treated as public government data and which should be treated as private nonpublic data:
 - the items identified in Appendix B of Staff Briefing Papers (cited above);
 - the appendices to the PPA filed with the Commission by NSP on February 11, 1998, and
 - all documents filed in this matter after March 1, 1998;
 - b) identify each item (or part thereof) in the above listed three areas that they cannot agree upon;
 - c) for each item whose government data status remains in dispute, the parties shall present their arguments and authority on how the disputed data should be classified.
2. In analyzing the data in the above listed three areas for their reports, the parties shall use

the Department of Administration's four prong test but should also indicate whether the status of the item would be different if a three prong test were used.

3. The Commission's Executive Secretary shall have authority to schedule this matter for hearing as soon as is convenient following receipt of the parties' filings.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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